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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

JANE ROE,

Plaintiff and Appellant,

v.

YARDI SYSTEMS, INC., et al.,

Defendants and Respondents.

A150657

(San Francisco County
Super. Ct. No. CGC16551050)

MEMORANDUM OPINION¹

Appellant Jane Roe (Roe) appeals from a judgment dismissing her First Amended Complaint (the FAC) against Yardi Systems, Inc. and Rentgrow, Inc. *dba* Yardi Resident Screening (collectively, respondents). For reasons discussed below, we reverse and remand the matter for further proceedings in light of the California Supreme Court decision in *Conner v. First Student, Inc.* (2018) 5 Cal.5th 1026 (*Conner*).

Roe alleges that respondents provided an inaccurate and misleading tenant screening report that interfered with her ability to rent an apartment.² Based on these allegations, the FAC brings causes of action under the Investigative Consumer Reporting Agencies Act (ICRAA) and Unfair Competition Law (Bus. and Prof. Code § 17200 et. seq.) against respondents.

¹ We resolve this case by a memorandum opinion pursuant to California Standards of Judicial Administration, section 8.1.

² Roe also named e-backgroundchecks.com as a defendant in the FAC, but later dismissed all claims against e-backgroundchecks.com with prejudice.

Respondents filed a demurrer to the FAC, arguing that the ICRAA is unconstitutionally vague and unenforceable because it overlaps and conflicts with the Consumer Credit Reporting Agencies Act (CCRAA) (Civ. Code § 1785.1 et seq), relying on *Ortiz v. Lyon Management Group, Inc.* (2007) 157 Cal.App.4th 604 (*Ortiz*) and its companion case, *Trujillo v. First American Registry, Inc.* (2007) 157 Cal.App.4th 628 (*Trujillo*). Roe opposed the demurrer, arguing that respondents' tenant screening report is subject to both the ICRAA and the CCRAA, that there is no irreconcilable conflict that would make it impossible for respondents to comply with both statutes, and that the holding in *Ortiz* should not be extended to cover tenant screening reports containing criminal records information. While the demurrer to the FAC was pending, Roe filed a motion for leave to file a second amended complaint.

The trial court sustained the demurrer to all causes of action in the FAC without leave to amend and dismissed the case. The trial court explained that there were “no less than four court decisions finding the ICRAA unconstitutionally vague because it conflicts with the [CCRAA],” including *Ortiz* and *Trujillo*, and concluded that it did “not have discretion to ignore settled law.” The trial court also denied Roe's motion to file a second amended complaint because Roe's arguments were “essentially the same as on the demurrer.” Roe filed a timely appeal.

On May 19, 2017, respondents filed a motion to stay the appeal pending the California Supreme Court's decision in *Conner*. Respondents explained that “the key issue before the California Supreme Court in *Conner* is the same key issue before this Court: whether the Fourth Appellate District in *Ortiz* correctly concluded – in direct contrast to the Second Appellate District's holding in *Conner* – that the ICRAA is unconstitutionally vague when information in a consumer report is subject to both the ICRAA and CCRAA.” Respondents offered to stipulate to a stay of proceedings. Roe opposed a stay, contending that “[t]his Court does not need to wait for the Supreme Court to articulate the rules governing the interpretation of overlapping statutory provisions” We granted the motion and stayed the appeal until *Conner* was decided.

The California Supreme Court issued its decision in *Conner* on August 20, 2018, holding that the overlap between the CCRAA and the ICRAA does not render the ICRAA unconstitutionally vague, and thereby disapproving of *Ortiz* and *Trujillo*. (*Conner, supra*, 5 Cal.5th at pp. 1035–1038.) Respondents recognize that this holding necessitates a remand to the trial court because their demurrer relied on the void-for-overlap theory in *Ortiz* and *Trujillo* that *Conner* expressly disapproved. Thus, after the remittitur in *Conner*, respondents offered to stipulate to a remand “to promote efficiency.” However, Roe refused and instead filed a supplemental opening brief and a reply brief seeking reversal and an issuance of a published decision stating that the trial court erred in light of *Conner*. In her reply brief, Roe argued that “an opinion from this Court which decided the questions of law presented in this appeal and reversed the Superior Court’s judgment of dismissal would better conserve judicial resources and promote efficiency.”

We find that the appropriate and most efficient disposition is to reverse the judgment of dismissal and remand to the trial court so that it can apply the new standard laid out in *Conner*. (*Conner, supra*, 5 Cal.5th at pp. 1035–1038; Civil Procedure Code § 43 [the court of appeal has to resolve issues raised on appeal, including to “direct further proceedings to be had”].)

DISPOSITION

The judgment is reversed and the matter remanded for further proceedings in light of the California Supreme Court decision in *Conner v. First Student, Inc.* (2018) 5 Cal.5th 1026. Each party to bear their own costs on appeal.

Petrou, J.

WE CONCUR:

Siggins, P.J.

Fujisaki, J.

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